

July 8, 2019

The Honorable Ajit V. Pai
Chairman, Federal Communications Commission
455 12th Street, Southwest
Washington, DC 20544

Re: Cable Franchising FNPRM (MB Docket No. 05-311)

Dear Chairman Pai:

On behalf of the City and citizens of West St. Paul, Minnesota I am expressing our concerns regarding the FCC's proposed action regarding its Second Further Notice of Proposed Rulemaking, "Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992" (MB Docket No. 05-311). We understand the FCC is proposing to allow cable operators to unilaterally reduce the "fair market value" of non-monetary franchise requirements from cable franchise fees that the operators pay to local governments as rent for use of the local public rights-of-way. This would result in a significant decrease in franchise fee revenues to the City of West St. Paul. We are concerned about the impact this rulemaking may have on consumer protection, the continued availability of media production services to the public, and the impact on valuable local Public, Educational and Government (PEG) channels and programming in our City.

West St. Paul is a community of just over 20,000 persons. We have just over 71 miles of local roadways through which cable franchisees have the right under franchise agreements to run cable, place facilities and other equipment. Franchise fees collected during 2018 for this use of right of way from cable providers totaled \$246,101.46. This fee is di minimis in comparison to the cost of providing access to the right of way for their use.

West St. Paul recently completed a reconstruction project of the primary commercial collector within our community. The purchase of temporary easements, permanent easements, and in some case access rights on this 2.5 mile roadway cost just under \$7 million. Additionally, we are currently in the process of acquiring permanent trail easements and temporary construction easements for a trail project along two collector roadways. At completion, we will acquire easements from 45 parcels of record totaling 53,271 square feet of trail easement and 52,291 square feet of temporary construction easements for a total permanent and temporary impact on 2.42 acres. In total, the acquisition, appraisal, and legal costs for these easements will be about \$1.1

million. Those costs multiplied by our entire 71 miles of right of way reveals that franchise fees paid to rent this same space from the public amounts to a mere pittance of what would need to be spent by cable providers to acquire their use of this property through some other means.

Section 622(g) of the Cable Act plainly states that a franchise fee is limited to a “tax, fee, or assessment of any kind” imposed on a cable operator. A franchise fee is simply a monetary fee. The Cable Act caps this fee at 5% of a cable operator’s gross revenues from the provision of cable services. For decades, this has been the practice of cable operators and local franchising authorities. The action being proposed in the FCC’s proposed rulemaking is contrary to the plain language of the Cable Act, the legislative history of the Cable Act, decades of past practice and, simply put, a sense of equity and fairness.

The City of West St. Paul is a member of a cable communications access television commission with six (6) neighboring communities. Our Commission relies on franchise fees and PEG fees to fund their operation. PEG access channels provide extremely valued local programming that is not produced elsewhere. This programming includes live and on demand video of all City Council meetings and coverage of community events such as high school sports, graduations, and political candidate forums. PEG fees paid by West St. Paul consumers in 2018 was only \$99,240. This small fee is allocated to our cable commission, which is a valued piece of our communication and transparency infrastructure. Those consumers that pay these PEG fees benefit by receiving unique local programming about their city and the local community.

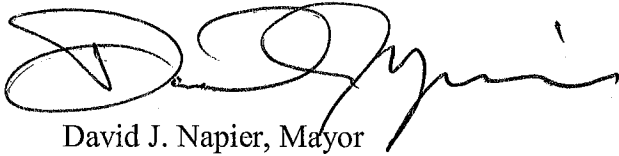
Not only do local governments produce local programming, but they also provide a consumer protection role. When residents are unable to resolve issues with their franchised cable operator, it is local government that intervenes on their behalf to resolve these issues. This helps improve the customer service of the franchised cable operators.

For 35 years, under the framework of the Federal Cable Act and state law, local franchising authorities have relied on Franchise Fees to fund PEG programming operations and fund local franchising oversight responsibilities as consistent with federal and state law. We are concerned that the impact of the FCC’s proposed rulemaking will result in the elimination or a significant reduction of programming, the help for cable subscribers in resolving issues, and the training and access to resources.

The action of the FCC in the recent small cell wireless order and this proposed action on franchise fees completely contradict each other in a way that harms local governments and benefits for-profit companies. The small cell order limits a local government’s ability to recover even their cost for use of public assets, while this proposed rulemaking allows for-profit companies to name their “fair market value” to reduce their compensation for use of the rights-of-way. These proposals suggest that the FCC views local governments as its adversaries and that there seems to be no consideration of how to ensure the sustainability of local PEG programming or how to better protect consumers.

We encourage the FCC to refrain from adopting the proposals in its Second Further Notice of Proposed Rulemaking and to redirect its focus to serving consumers and communities.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Napier', with a stylized flourish at the end.

David J. Napier, Mayor
City of West St. Paul

cc: The Honorable Michael O'Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Geoffrey Starks, Commissioner
Senator Amy Klobuchar
Senator Tina Smith
Congressperson Angie Craig